THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE G.BHAVANI PRASAD

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WRIT PETITION NO.2903 of 2004

15th June 2007

Between:

1. Avula Kesari Kumar, S/o.late Mutyala Swamy Naidu, 62 years, R/o.Plot No.36, Royal Enclave, Manovikas Nagar, Asmatpet, Hyderabad-9.

And three others.

…PETITIONERS

AND

1. Hanuman Diety of Hanuman Temple, Vidyaranyapuri, Hanumakonda, Warangal District, per Worshippers K.Laxma Reddy, S/o.Malla Reddy.

And seven others.

…RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE G.BHAVANI PRASAD

WRIT PETITION NO.2903 of 2004

ORDER: (Per the Hon'ble Mr Justice B.Prakash Rao)

Heard Sri P.Shiv Kumar, learned counsel for the petitioners and Sri Ghansyamdas Mandhani, learned counsel for the contesting respondent.

The petitioners filed this Writ Petition, *inter alia*, seeking Writ of Certiorari to assail the order dated 17.11.2000 in L.G.A.No.1 of 2001 in L.G.C.No.2 of 1989 and 6 of 1986 on the file of the Tribunal under Land Grabbing (Prohibition) Act-cum-District Court, Warrangal, which was confirmed in appeal as per the order dated 15.12.2003 by the Special Court under A.P. Land Grabbing (Prohibition) Act, Hyderabad and they have been declared as land grabbers as per the said order.

The facts, in brief, which are necessary for disposal of this Writ Petition, are that, originally, the contesting respondent-Sri Hanuman Temple filed an application seeking dispossession of the petitioners

since they have grabbed the schedule land without any right or title, as the said land belongs to the Temple. Therefore, the petitioners have no claim over the said property. Contesting the same, the case of the first petitioner was that he has got absolute proprietary rights, title and interest having succeeded as the son of one Late Smt.Rajammal, W/o. Late .Mutyala Swamy Naidu-the owner of the property. Therefore, the Temple has absolutely no right, title or interest nor there is any such dedication to the Temple and the claim made by the Temple or on behalf of the Temple by the private individuals, who have been came forward as petitioner Nos.2 and 3 is liable to be rejected. After framing the issues, both the sides went into trial where P.W.1 was examined and Exs.A1 to A10 were marked on behalf of the petitioners. On behalf of the respondents, R.Ws.1 to 14 were examined and Exs.B1 to B76. On appreciation thereof, the Special Tribunal found favour with the case of the

respondent-applicant and held that the petitioners have grabbed the land. Further, it is also held negatively that the first petitioner is not the son of the said Late Smt.Rajammal. The first petitioner carried the matter in appeal and the appellate Court reiterated the very same claim mainly basing on the claim that he is the son of the said Late

Smt.Rajammal. On a reappraisal of the entire evidence and material on record, the Special Court reiterated that the petitioners have grabbed the same and the plea that the first petitioner is the son of Late Smt.Rajammal is not correct. Hence, the Writ Petition.

Having heard the counsel on either side and on perusal of the material available on record, the points that arise for consideration is whether the petitioners can be declared as land grabbers and secondly, whether the first petitioner is the son of Late Smt.Rajammal, who succeeded the property from her.

Coming to the first aspect, no doubt, an attempt has been made by the counsel taking us to the contents of the application and also the relief as sought *vis-à-vis* to show that there is no act nor there is declaration sought to declare the petitioners as land grabbers and therefore, there being no proper foundation laid to show that the petitioners are the land grabbers, the application filed and orders passed are not maintainable. Further, having regard to the starring fact against the petitioners, both the Tribunal and the appellate Court concurrently held that the first petitioner is not the son of Late Smt.Rajammal as the claim put forth by him. Necessarily, it calls for

the petitioners to avail appropriate remedies available under the law and especially, the first petitioner to prove himself as the son of the said Late Smt.Rajammal and it is only thereafter, the petitioners can assail the correctness of the claim set forth by the contesting respondent herein. In fact, all these questions as involved are quite serious in nature and would not have gone into or taken up by the authorities as constituted under the provisions of the Act and these questions can only be decided by the common law Courts rather than by the special authority as constituted for special purposes in the said circumstances.

Having regard to the above circumstances, the main question involved is as to whether the first petitioner is the son of Late Mutyala Swamy Naidu or Smt.Rajammal or not.

This question needs to be established in a competent Court under appropriate proceedings initiated under law. The question whether there is any land grabbing or not, detain us to go into the merits of the case that the petitioners can assail any of these orders. Thus, leaving it open to the petitioners herein to avail appropriate remedies and work out the same, it is made clear that in the event the petitioners file a separate suit, it is always open to both the sides to file

an interlocutory application claiming all these. Admittedly, the subject matter of the property in these proceedings is open land. It is also the case of the petitioners that they do not use it for any purpose either agricultural or otherwise. Learned counsel for the contesting respondent submitted that the said land could be made used for all functions in connection with the Temple. These all are matters, which can certainly be considered at the time of disposal of the interlocutory application in a suit to be filed by the petitioners.

Subject to the above, the Writ Petition is dismissed. No costs.

It is further made clear that till the disposal of the proceedings to be initiated by the petitioners in a suit before an appropriate forum, the petitioners shall not make any construction or alter the nature of the property. On filing of such suit, the Court concerned shall dispose of the same within a period of two years from such filing, on merits in accordance with law. It is also made clear that any observations or findings given in these proceedings shall not influence or come in the way of disposal of the suit.

(B.PRAKASH RAO, J)

(G.BHAVANI PRASAD, J)

15th June 2007
RRB